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HIGH COURT OF CHHATTISGARH AT BILASPUR

SECOND APPEAL No. 554/2005

Single Bench: **Hon'ble Shri Dilip Raosaheb Deshmukh, J.**

APPELLANT PLAINTIFF

Subhashchandra Ghosh, S/o. Shri D.B. Ghosh, Aged at present about 55 years, R/o Tikarapara, Bilaspur (CG)

Versus

RESPONDENTS DEFENDANTS

1. Ku. Shrela Ghosh, S/o Late Shri D.B. Ghosh, Teacher, Holycross School, Raipur (CG)
2. Smt. Doly Bose, W/o. Abhijeet Bose, Opp. Maharashtra Mandal, Tikarapara, Bilaspur (CG)
3. Smt Deepali Bose, W/o. Sapan Kumar Bose, Assistant Engineer, Nagar Nigam, Raipur (CG).
4. P.R. Ghosh, S/o. D.B. Ghosh, Qtr. No. MIG-222, Padmnabhpur, District-Durg (CG)
5. Smt. Ena Osborn, W/o. Shri E. Osborn, R/o. Railway Qtr. No. 1309, Wireless Colony, Tarbahar Bilaspur.
6. Smt. R. Sarkar, W/o. Dr. P.K. Dey. Sarkar, Efrovilla Mannu Chowk, Tikarapara, Bilaspur (CG).
7. Smt. Leenadas, W/o. Shri S.R. Das, Through: Opp. State Bank of India, Tikarapara, Bilaspur (CG)
8. 1. Smt. Annapurna Ghosh, W/o. Late Shri M.R. Ghosh, Age-45 years.
   2. Suman Ghosh, D/o. Late M.R. Ghosh, Age-22 years.
   3. Ku. Megha Ghosh, D/o. Late M.R. Ghosh, Age-22 years.

   All 3 are R/o. Mission Hospital Compound, Idgaha Chowk, Bilaspur (CG)
9. Shri. S.R. Ghosh, S/o. D.B. Ghosh, Through-Edwani Elacone Company Limited –Bhopal.
10. Chinu Mistra, W/o. R.N. Mitra, Makan NO. C-38, Sector-6, Rourkella-3, Orrissa.

11. Chitranjan Ghosh, S/o. D.B. Ghosh, Qtr. No. G-1/92, Orient Paper Mill, Post-Brijrajnagar,District-Sundergarh Orissa).,

12. Dilip Ranjan Ghosh, S/o. D.B. Ghosh, R/o. Tikarapara, Bilaspur, Opp. Maharashtra Mandal, Bilaspur (CG)

13. N.R. Ghosh, S/o. D.B. Ghosh, Reporter, Railway Station-Champa, District-Bilaspur (Now-Janjgir-Champa).

14. The State of Chhattisgarh, Through : District Collector, Tahsil & District-Bilaspur (CG)

Present: Shri Sanjay Patel, learned counsel for the appellant.
Shri U. Bharat, learned counsel for the respondents.
Shri Akhil Agrawal, PL for State.

ORAL ORDER

(Passed on 29th March, 2007)

1. Being aggrieved by the judgment and decree dated 07.11.2005 passed by the Additional District Judge, Bilaspur in Civil Appeal No. 4-A of 2001 arising out of the judgment and decree dated 03.05.2001 passed by Sixth Civil Judge Class-II Bilaspur in Civil Suit No.16-A of 2000, the appellant/plaintiff has preferred this appeal.

2. Heard on admission.

3. Learned counsel for the appellant made a two-fold submission:-

a) In view of Section 4 (2) of the Benami transaction (Prohibition Act) 1988 (hereinafter referred to as the 'Act'), the defence that the transaction of purchase of the suit house on 3.12.1960 was Benami was not available to D.B. Ghosh.

b) On facts, the finding recorded by both the Courts below that the transaction of purchase of the suit house on 3.12.1960 by D.B. Ghosh in the name of his wife was Benami was perverse.

No other point was urged in this appeal.

4. Learned counsel for the appellant did not dispute the following facts relevant for adjudication of the grounds urged in this appeal :-

A/ that the suit land was purchased in the name of Sudha Rani Ghosh on 3.12.1960.

B/ that D.B. Ghosh had constructed a house on the suit land.

C/ that Sudha Rani Ghosh died on 13.1.1979.

D/ that the consideration of the said purchase was paid by D.B. Ghosh, husband of Sudha Rani Ghosh out of his self acquired funds.

E/ that after death of Sudha Rani Ghosh, the suit property was recorded in the name of Deenbandhu Ghosh who was in possession thereof.

F/ that the suit was filed on 11.4.1988 whereas the Act came into force on 19.5.1988.

G/ that D.B. Ghosh had executed a registered will deed of his self acquired property in favour of his daughter namely Ku. Shreela Ghosh, respondent No. 1.

5. Having heard the learned counsel for the appellant, I have perused the record. It is not disputed that the civil suit was filed on 11.4.1988 i.e. before the Act came into force. In *R. Rajagopal Reddy Vs. Padmini Chandrasekharan* **AIR 1996 SC 238** it was held that Sub-section (1) of section 4 of the Act cannot be applied to a suit to enforce any right in property held Benami against person in whose name such property is held or any other person, if such proceeding is initiated by or on behalf of a person claiming to be real owner thereof, prior to coming into force of Sub-section (1) of section 4 of the Act. In view of the fact that the suit was instituted prior to coming into force of the Act, the defence that the transaction was Benami in nature was available to D.B. Ghosh on the date of suit and therefore in view of the Apex Court's judgment in

R.Rajagopal Reddy (supra) the first contention of the learned counsel for the appellant fails.

6. So far as the second contention is concerned, it is not disputed that the consideration for purchasing the suit land was paid by D.B. Ghosh. It is also not disputed that D.B. Ghosh had constructed a house on the suit land. It is also not disputed that D.B. Ghosh was in possession of the suit property and the same was also mutated in his name after Sudha Rani's death. It is further not disputed that the suit property was purchased by D.B. Ghosh from his self acquired funds. In the light of these facts and the guidelines laid down by the Apex Court in *Valliammal Vs. Subramaniam and others* **2004 AIR SCW 4948,** the purchase of the suit house by D.B. Ghosh in the name of Sudha Rani Ghosh was rightly held to be a Benami transaction. Both the Courts below have recorded a concurrent finding of fact that the registered sale deed dated 3.12.1960 in the name of Sudha Rani Ghosh was a Benami transaction. Such a finding being a finding of fact and also in conformity with the guidelines laid down by the Apex Court in Valliammal's case (supra) cannot be faulted with. In this view of the matter, I am of the considered opinion that no substantial question of law arises for determination in this appeal, which is accordingly dismissed at the stage of admission. There shall be no order as to costs.

Sd-/
Dilip Raosaheb Deshmukh
Judge

Priya